FILE COPY

FILED

APR 9 1935

CHARLES E. ...

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. [redacted] 10

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

against

CITY BANK FARMERS TRUST COMPANY as Trustee under an agreement with Gertrude Feldman James, Deceased,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MEMORANDUM ON BEHALF OF RESPONDENT.

RUSSELL L. BRADFORD,
Attorney for Respondent.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, New York.
Of Counsel.

INDEX.

CITATIONS.

	PAGE
Commissioner of Internal Revenue v. *Strauss, et al., Executors;* rendered March 30, 1935 (unofficially reported in Commerce Clearing House Standard Federal Tax Service, Vol. 3, 1935, Par. 9266 at p. 9751—report April 3, 1935)	2
Lit v. *Commissioner* (72 F. (2) 551—C. C. A. 3)	2
Helvering v. *Helmholz,* Court of Appeals of the District of Columbia (75 F. (2) 245)	2
Porter v. *Commissioner* (288 U. S. 436, 443, 444)	2
Reinecke v. *Northern Trust Co.* (278 U. S. 339)	2
Reinecke v. *Smith* (289 U. S. 172, 176, 177)	2
White v. *Poor* (C. C. A. 1, 75 F. (2) 35)	2

Supreme Court of the United States,

OCTOBER TERM, 1934.

No. 805

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

against

CITY BANK FARMERS TRUST COMPANY as Trustee under an agreement with Gertrude Feldman James, Deceased,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MEMORANDUM ON BEHALF OF RESPONDENT.

The undersigned had prepared a brief in opposition to the granting of the writ prayed for by the Commissioner herein, contending (1) that there was no general principle of law involved in this case not already in effect passed upon by this Court; and (2) that there was no conflict in the decision below with any decision of this Court; and (3) that there was no actual conflict with the decision of any other Circuit Court of Appeals; and (4) that the statute was not susceptible of any construction other than that given it by the court below without raising serious constitutional questions as to the validity of the statute.

Since the completion of the brief, however, there has been published a decision of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner of Internal Revenue* v. *Strauss, et al., Executors,* rendered March 30, 1935 (unofficially reported in Commerce Clearing House Standard Federal Tax Service, Vol. 3, 1935, Par. 9756 at p. 9751 —report April 3, 1935) which is in obvious conflict with the decision below, and with the decisions in *Lit* v. *Commissioner* (72 F. (2) 551—C. C. A. 3), *White* v. *Poor* (C. C. A. 1, 75 F. (2) 35), and *Helvering* v. *Helmholz,* Court of Appeals of the District of Columbia (75 F. (2) 245).

In lieu of the brief prepared by the undersigned we respectfully submit this memorandum drawing to the attention of this Court the said decision of the Circuit Court of Appeals for the Seventh Circuit. Notwithstanding we believe the decision of that Court to be an incorrect interpretation of the law, and believe the interpretation given to the statute by that Court renders the statute unconstitutional as a violation of the due process of law clause of the Fifth Amendment; and notwithstanding we believe that decision in conflict with the decisions of this Court, and particularly with the decision in *Reinecke* v. *Northern Trust Co.* (278 U. S. 339), and in conflict with the clear implications of *Porter* v. *Commissioner* (288 U. S. 436, 443, 444) and *Reinecke* v. *Smith* (289 U. S. 172, 176, 177), the conflict between circuits, thus disclosed, may require this Court to issue certiorari.

Respectfully submitted,

April 6, 1935.

RUSSELL L. BRADFORD,
Attorney for Respondent.

MITCHELL, TAYLOR, CAPRON & MARSH,
20 Exchange Place,
New York, New York.
Of Counsel.